

§211.41

49 CFR Ch. II (10–1–11 Edition)

FEDERAL REGISTER, the Federal Railroad Administration will publish a notice in the FEDERAL REGISTER indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If the Federal Railroad Administration receives any written adverse comment or request for oral hearing within the specified time of publication in the FEDERAL REGISTER, a notice withdrawing the direct final rule will be published in the final rule section of the FEDERAL REGISTER and, if the Federal Railroad Administration decides a rulemaking is warranted, a notice of proposed rulemaking will be published in the proposed rule section of the FEDERAL REGISTER.

(e) An “adverse” comment for the purpose of this subpart means any comment that the Federal Railroad Administration determines is critical of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule.

[72 FR 10087, Mar. 7, 2007]

Subpart C—Waivers

§211.41 Processing of petitions for waiver of safety rules.

(a) *General.* Each petition for a permanent or temporary waiver of a safety rule, regulation or standard filed as prescribed in §§211.7 and 211.9, is referred to the Railroad Safety Board for decision and decided not later than 9 months after receipt.

(b) *Notice and hearing.* If required by statute or the Administrator or the Railroad Safety Board deems it desirable, a notice is published in the FEDERAL REGISTER, an opportunity for public comment is provided, and a hearing is held in accordance with §211.25, before the petition is granted or denied.

(c) *Grants.* If the Railroad Safety Board determines that the petition complies with the requirements of §211.9 and that a waiver is justified, it grants the petition. Conditions may be imposed on the grant of waiver if the Board concludes they are necessary to assure safety or are in the public interest.

(d) *Denials.* If the Railroad Safety Board determines that the petition

does not comply with the requirements of §211.9 or that a waiver is not justified, it denies the petition.

(e) *Notification.* Whenever the Railroad Safety Board grants or denies a petition, a notice of that grant or denial is sent to the petitioner. When a petition has been decided, interested persons are also notified or a notice is published in the FEDERAL REGISTER.

(f) *Petition for reconsideration.* Any person may petition for reconsideration of the grant or denial of a waiver under procedures set forth in §211.57. Each petition shall be processed in accordance with §211.59.

§211.43 Processing of other waiver petitions.

(a) *General.* Except as provided in §211.41, each petition for a permanent or temporary waiver of a rule, regulation or standard shall be filed and processed as prescribed in §§211.7 and 211.9.

(b) *Notice and hearing.* If required by statute or the Administrator deems it desirable, a notice is published in the FEDERAL REGISTER, an opportunity for public comment is provided, and a hearing is held in accordance with §211.25, before the petition is granted or denied.

(c) *Grants.* If the Administrator determines that the petition complies with the requirements of §211.9 and that a waiver is justified, he grants the waiver. Conditions may be imposed on the grant of waiver if the Administrator concludes they are necessary to achieve the purposes of programs affected by the grant of waiver or are otherwise in the public interest.

(d) *Denials.* If the Administrator determines that the petition does not comply with the requirements of §211.9 or that a waiver is not justified, he denies the waiver.

(e) *Notification.* Whenever the Administrator grants or denies a petition, a notice of the grant or denial is sent to the petitioner. When a petition has been decided, interested persons are also notified or a notice is published in the FEDERAL REGISTER.

(f) *Petitions for reconsideration.* Any person may petition for reconsideration of the grant or denial of a waiver under procedures set forth in §211.57.

Federal Railroad Administration, DOT

§ 211.45

Each petition shall be processed in accordance with § 211.59.

§ 211.45 Petitions for emergency waiver of safety rules.

(a) *General.* This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event or an emergency situation. For purposes of this section, the terms “emergency event” and “emergency situation” mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.

(b) *Emergency Relief Docket.* Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible Federal eRulemaking Portal (FeP). The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket’s Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). By January 31st of each year, FRA publishes a notice in the FEDERAL REGISTER identifying by docket number the ERD for that year. A notice will also be placed in the previous year’s ERD identifying the new docket number.

(c) *Determining the existence of an emergency event or an emergency situation.* If the Administrator determines that an emergency event or an emergency situation identified in paragraph (a) of this section has occurred, or that an imminent threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (b) of this sec-

tion. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, State, or Federal officials, and determinations by the Federal government that a credible threat of a terrorist attack exists.

(d) *Notification.* When possible, FRA will post the FRA Administrator’s determination described in paragraph (c) of this section on its Web site at <http://www.fra.dot.gov>. FRA will also place the FRA Administrator’s determination in the ERD as soon as practicable.

(e) *Content of petitions for emergency waivers.* Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under § 211.9(a) and (b). The petition should at a minimum describe the following: how the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (e.g., movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements.* Petitions filed under this section, shall be submitted using any of the following methods:

(1) E-mail to FRA at: RRS.Correspondence@fra.dot.gov;

(2) Facsimile to FRA at: 202-493-6309; or

(3) Mail to FRA at: FRA Docket Clerk, Office of Chief Counsel, RCC-10, Mail Stop 10, 1200 New Jersey Ave. SE., Washington, DC 20590, facsimile no. 202-493-6068.

(g) *FRA Handling and Initial Review.* Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The FeP numbers each document that is added to a docket. (For example, the first document submitted to the docket in 2009 will be identified as FRA-2009-XXX-1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on